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Attorney Docket No. 0132-005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of :
Doc's Deer Farm & Scents

Serial No. : 09/524,928

Group Art Unit : 1615

Filed : 3/14/00

Examiner : Ware, T.

For : **SELECTED MIXTURE FOR ANIMAL LURE**

AFFIDAVIT UNDER 37 C.F.R. 1.132

The Honorable Commissioner
For Patents and Trademarks
Washington, D.C. 20231

Dear Sir :

The Undersigned, Dennis W. Malloy, Jr. hereby declares as follows :

That he received a Bachelor of Science degree in wildlife resources in 1993 from West Virginia University, and has been certified for over seven years by the Ohio Division of Wildlife-ODNR, and for twenty years has been extensively engaged in hunting and other wildlife activities.

That he has also engaged in various wildlife studies during college, service with the ODNR, and while in private industry.

That he is currently vice president and owner of Outdoor Icon, Inc.,

devoting his entire profession time to wildlife-related activities.

That as a result of his extensive studies and those of others, it is his professional opinion that the deer family, which includes: all types of deer, moose, caribou, elk, and the like, have basically the same scent and communication behaviors. All members of this family use the same types of rubs, scrapes, or wallows, indicating that an animal is in the area. These scrapes act as sign posts indicating either invitation or warning to other animals of particular species. This is accepted as common knowledge among those dealing extensively and having expertise with such animals.

That all male animals of the deer family exhibit the same characteristics when in heat, and follow the same pattern in trying to isolate a single female in estrus to carry out mating activities. Animals in the deer family do not mate in groups. Rather, during the short annual breeding period males will constantly chase females to isolate one, breeding with that one, and then searching for others to isolate and breed with. This is accepted as common knowledge by those dealing extensively and having expertise with the deer family.

That female deer, including those in estrus travel in relatively large groups of three and most often more, and that under no circumstances has the Undersigned ever witnesses or heard of only two does in estrus traveling together

and using the same scrape. The use of the same scrape by two does in estrus does not occur in nature due to a large number of factors pertaining to the mating habits of animals in the deer family. This is considered common knowledge among those dealing extensively and having expertise with the deer family.

That based upon this knowledge, the Undersigned agreed to participate in an experiment to determine the effects of urine from only two does in estrus, a situation not known to occur in nature.

That he conducted a series of tests from October 15-October 30, 2000 to compare the "Doc's Double Doe" formulation, as specified in the claims of the subject patent application, with other common deer lure formulations according to the following protocols :

1. Observation of deer was conducted over eight days on two different test plots, including an urban setting and a rural setting, arranged as depicted in the drawing attached hereto as Exhibit "A", where an urban setting is defined as an area immediately adjacent to the outer parts of a city, and has lightly wooded areas and areas of lawn sufficient to shelter and feed a small deer population, and where a rural setting is constituted by open farmland and woodland.

2. The urban test plot was approximately « acre in size

drawing animals from an area of approximately 500 acres, and the rural test plot was also approximately « acre in size, drawing animals from a test area of approximately 100-150 acres.

3. Sixteen hours were spent observing deer at each test plot during eight days between October 15 and October 30, 2000, the time spent at each test plot being eight hours of observation carried out in two hour periods immediately after sunrise, and two hours before sunset, with each test plot being monitored once a day, alternating between morning and afternoon observations from one of two observation points located as depicted in the drawing of Exhibit "A".

4. A different mock scrape was located at each corner of each of the test plots in the sequence depicted in Exhibit "A" as follows :

- (a) Test Site #1 was diluted water;
- (b) Test Site #2 was urine from one deer;
- (c) Test Site #3 was the "Doc's Double Doe" formulation described in the present patent application; and,
- (d) Test Site #4 was a formulation including urine from three or more deer.

With the exception of group (a) the operative ingredient in each of the

groups was urine from at least one doe in estrus. To the best knowledge of the Undersigned, the single-doe formulations were provided from urine harvested by Doc's Deer Farms to assure quality control. To the best knowledge of the Undersigned there are no additions made by the retailers who bottled the basic single doe urine provided by Doc's Deer Farms. As has been previously indicated in the pending patent application, the Doc's "Double Doe" formulation contains only urine from only two does in estrus. Nothing else has been added. Doc's Deer Farms also harvested the urine used by the retailers of the formulations of group (d). Urine from at least one doe in estrus is the only operative ingredient in these formulations that can be used to attract a buck in ^{RJA}~~heat~~. To the best knowledge of the Undersigned, there is nothing besides deer urine from three or more does in estrus in the formulations of category (d). However the Undersigned cannot state with absolute certainty that no fillers or preservatives or other non-operative ingredients have been added. The Undersigned asserts that all possible steps have been taken to strictly limit the comparison to formulations having only urine from does in heat as the operative ingredient.

5. Each of the test sites were baited in the morning of each morning during the survey period with approximately one eyedropper of the appropriate formulation, and each test site constituted a mock deer scrape approximately

1 1/2 - 2 feet in diameter, configured to appear as it had been created by the activities of deer.

6. The test sites were rotated in a clockwise direction with respect to the drawing of Exhibit "A" after every two survey days according to the following protocol :

(a) The entirety of each mock scrape was dug up to a depth of approximately 1 foot and removed in its entirety;

(b) The new mock scrape with its new material was placed no closer than 10 feet to the spot of the old mock scrape.

(c) The same amount of liquid formula was placed for the new mock scrape as had been applied to the previous mock scrape at each of the test sites, for each of the test plots (rural and urban settings) as depicted in the drawing of Exhibit "A"; and

Where possible, each of the test sites (1-4) was placed under trees or overhanging branches so as to be favorable to deer. The observation post was located in an entirely camouflaged blind which had been treated with the most effective scent masking agents available.

The observer, along with all of his clothing and equipment had also been treated by the most effective scent masking agent available.

That a total of 32 deer were observed, with 29 of them displaying clear preference for the mock scrapes using "Doc's Double Doe" formula as claimed in the present patent application. The preference was manifested by the buck's use of the mock scrape, including activities such as further scraping, urinating, defecating, or just staying next to the scrape to look for the source of the deer urine.

That the observations for both test plots over the eight day period, including 32 total hours of observation, broke down as follows :

(a) The test sites baited with tap water showed only approximately 4% usage by the deer;

(b) The test sites baited with single doe urine showed only approximately 11% usage;

(c) The test sites baited with urine from three or more animals showed only approximately 14% usage; and,

(d) The test sites baited with the "Doc's Double Doe" formulation of the present invention showed approximately 91% usage.

That the test sites using "Doc's Double Doe" formula appeared to be utilized nearly all of the time while the other test sites seemed to be used only if a more dominant buck was already utilizing the test site baited with "Doc's Double Doe"

formula. During the observation period six different fights or other aggressive behavior broke out with bucks competing for the test site baited with "Doc's Double Doe" formulation.

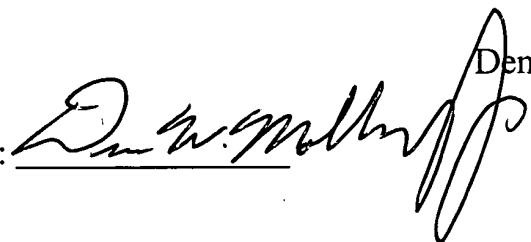
That further observations indicated that there was more usage of all test sites in the afternoon than in the morning, and that very little usage occurred in all test sites on windy days as compared to calm days.

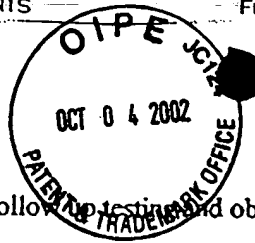
That during the observation period five does were observed to adopt buck-like behavior in that they pawed the mock scrape baited with "Doc's Double Doe", and urinated further on it. Further, most does observed appeared to be more comfortable in the vicinity of the test site baited with "Doc's Double Doe" formulation.

That based upon the aforementioned observations conducted under the described protocol, the Undersigned definitely concludes that over 90% of the deer observed showed a marked preference for the "Doc's Double Doe" formula of the present application over other commonly used deer lure formulations (single doe urine and urine from three or more does).

The Undersigned acknowledges that willful false statements and the like are punishable by fines, or imprisonment, or both (18 U.S.C. 1001), and may jeopardize the validity of the application or any patent issuing thereon. The Undersigned asserts that all statements made are of the Undersigned's own knowledge are true and that all statements made upon other information and belief are believed to be true.

Respectfully submitted,

Date :  Dennis W. Malloy, Jr.



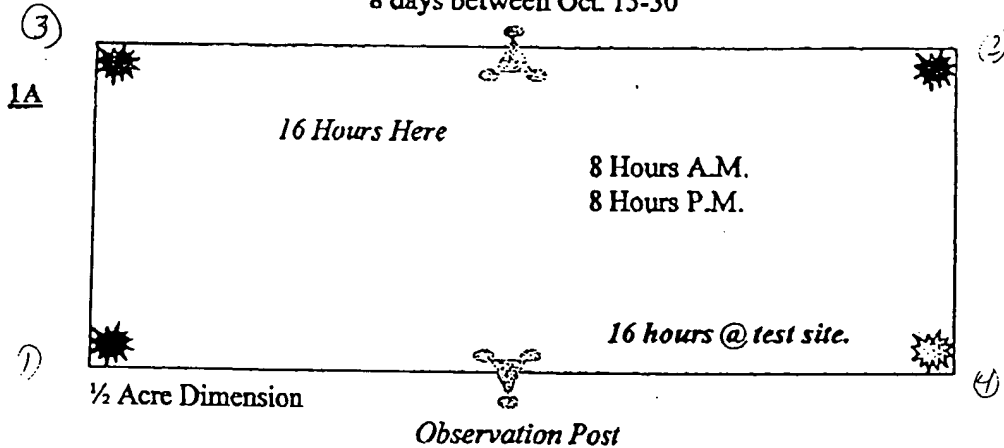
Follow-up testing and observations done by
Dennis Malloy Jr.

Wildlife Biologist

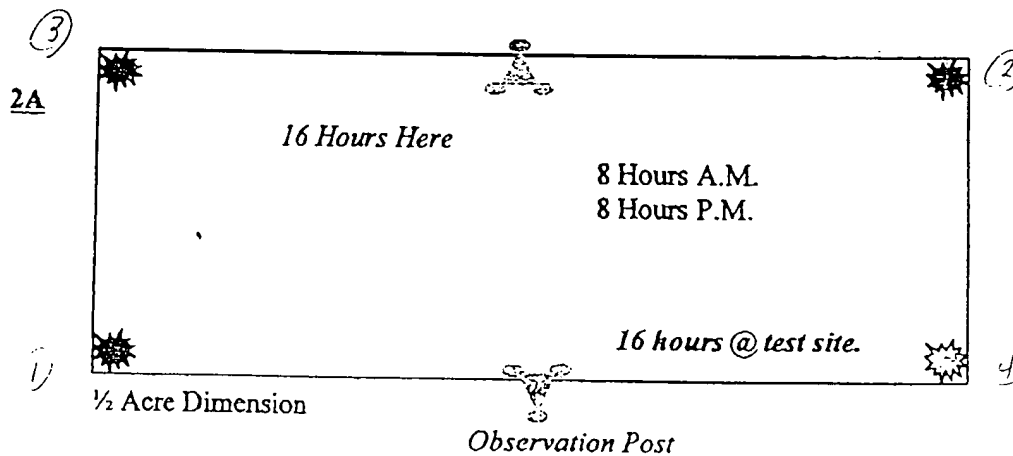
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Urban Setting

8 days between Oct. 15-30



Rural Setting



- A. 8 days total observation and 32 hours total.
- B. Mock Scrapes rotated in Clockwise positioning.
- C. Total of 32 deer were observed with 29 showing clear and extremely favorable results with a success rate of 90.6%.



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